UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

COMMUNITY ACTION ORGANIZATION OF ERIE COUNTY, INC.,

Plaintiff,

v.

No.: 17-cv-2093

STERICYCLE, INC., STERICYCLE SPECIALTY WASTE SOLUTIONS, INC.,

Defendants.

COMPLAINT

Plaintiff, Community Action Organization of Erie County, Inc., by its attorneys, Hodgson Russ LLP, alleges as follows:

The Parties

1. Plaintiff Community Action Organization of Erie County, Inc. ("CAO") is a New York not-for-profit corporation, with its principal place of business at 45 Jewett Avenue, Buffalo, New York, which is in the Western District of New York.

2. Defendants Stericycle, Inc. and Stericycle Specialty Waste Solutions, Inc. (collectively, "Stericycle") are Delaware corporations, with principal corporate offices at 28161 North Keith Drive, Lake Forest, Illinois.

Jurisdiction and Venue

3. This Court has jurisdiction over this action under 28 U.S.C. § 1332.

4. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1407(a) because this action involves common issues of fact with the multi-district litigation currently pending in the Northern District of Illinois, at No. 13-cv-5795.

5. Venue is proper in the Western District of New York under 28 U.S.C. § 1391(b)(2) because CAO is located in the Western District of New York, CAO signed the contract at issue in the Western District of New York, and Stericycle's employees picked up medical waste from a location in the Western District of New York.

Background

6. Stericycle holds itself out as the industry leader in medical waste disposal services, with more than one million customers worldwide.

7. Stericycle's focus is medical waste, and it specializes in the pickup, treatment, and disposal of biohazards.

8. Upon information and belief, Stericycle divides its customers into two classes: large-quantity waste generators and small-quantity waste generators.

9. CAO operates the Drug Abuse, Research & Treatment center ("DART"), which is located at 1237 Main Street, Buffalo, New York.

10. DART provides comprehensive and integrated services to assist individuals diagnosed with opiate dependence, including evaluation of the need for opiate dependent treatment.

11. DART's services are integral to fighting the opiate addiction epidemic in the Western New York community.

12. In the course of its mission, DART generates medical waste.

13. Upon information and belief, CAO is one of Stericycle's small-quantity waste generator customers.

The CAO-Stericycle Relationship

14. Stericycle first became involved as CAO's medical waste disposal provider in or about early 2008.

15. For the first full month of waste disposal services Stericycle provided — January 2008 — it charged CAO a **$540.00** fee.

16. Upon information and belief, Stericycle required its customers to sign new contracts when their previous agreement's term expired.

17. In August 2013, Stericycle required CAO to sign a "STERI-SAFE Service Agreement" to provide medical waste disposal services for DART at 1237 Main Street, Buffalo, New York (the "Service Agreement"). A copy of the Service Agreement is attached as **Exhibit A.**

18. The Service Agreement is a four-page document, which consists of a cover sheet, the Steri-Safe Terms and Conditions, and Stericycle's Regulated Medical Waste Acceptance Policy.

19. The Service Agreement is a form contract, which includes information specific to CAO's agreement with Stericycle — including DART's address, the waste disposal services CAO would receive, estimated yearly pick-ups from CAO, and monthly service fee — on the cover page only.

20. The Service Agreement is listed as being effective August 1, 2013. CAO signed the Service Agreement on or about August 20, 2013.

21. The cover page of the Service Agreement lists the monthly service fee as **$6,655.00**. Ex. A.

22. The Steri-Safe Terms and Conditions (the "Terms and Conditions") appear on the second and third pages of the Service Agreement, and are printed in dual-column, single-spaced format and small type. Other than the title at the top of the page, the Terms and Conditions are printed in sentence case, with no bold, italics, underlines, or any other means of emphasizing or setting apart any of the particular terms or conditions.

23. The Service Agreement, including its Terms and Conditions, were faxed by Stericycle, rendering its already small type even less legible.

24. The Terms and Conditions set the term of the Service Agreement as 60 months from its effective date. Ex. A, ¶ 2.

25. According to the Terms and Conditions, the Service Agreement would renew automatically for another 60-month term unless CAO provided Stericycle with (1) written

notice, (2) at least 60 days in advance, (3) during the six-month period preceding the termination date of the current Service Agreement. Ex. A, ¶ 2(a).

26. The Service Agreement contains a provision that limits Stericycle's ability to adjust the contract price to "account for operational changes it implements to comply with documented changes in law, to cover increases in the cost of fuel, insurance, or residue disposal, or to otherwise address cost escalation." Ex. A, ¶ 2(b).

The Overcharges & Stericycle's Breach

27. In contravention of the Service Agreement's terms — specifically, the monthly service fee listed on the cover page of the Service Agreement and limitations of price increases in Section 2(b) — Stericycle has unilaterally, systematically, and unjustifiably instituted increases in its monthly service fees to CAO.

28. For example, for August 2013 — the first month of the Service Agreement term — CAO was charged a **$8,924.37** service fee.

29. This initial, August 2013 monthly service fee was **$2,269.37 higher** than the monthly service fee listed on the cover page of the Service Agreement.

30. For August 2014, CAO was charged a **$10,327.86** monthly service fee, representing a **15.7% increase** in monthly fees between August 2013 and August 2014, and a **55.2% increase** from the monthly service fee listed on the cover page of the Service Agreement.

31. Between August 2013 and January 2017, CAO's monthly charge increased from **$8,924.37** to **$20,147.10** — an increase of **125.8%**.

32. The January 2017 monthly service fee charged to CAO was a **202.7% increase** over the monthly service fee listed on the cover page of the Service Agreement, and which CAO expected to pay each month.

33. The January 2017 monthly service fee was a **3,630.9% increase** over the initial monthly service fee Stericycle charged CAO in January 2008.

34. CAO was not notified about these price increases. Rather, the increased fees simply were charged to CAO's account, without any notice or explanation.

35. In February 2017, CAO contacted Stericycle to demand an explanation for these exponential price increases and requested an itemized breakdown of the fee increases applied to CAO's account.

36. An individual from Stericycle's Account Care division responded to this request and refused to provide documentation for, or an itemized breakdown of, the price increases, instead asserting that Stericycle was not required to provide an explanation for its increases and that Stericycle was acting in accordance with the Service Agreement.

37. To date, Stericycle has not provided any documentation or itemization of these increases in monthly service fees.

38. As a result of similar, unjustified overcharges to small-quantity customers, Stericycle entered a $2.4-million settlement with New York State in January 2013 for overcharging more than 1,000 New York government entities. As part of this settlement,

Stericycle agreed to stop imposing its systematic rate increases on its New York government entity customers.

39. Notwithstanding this settlement, Stericycle continued, and still continues, to apply the very same systematic rate increases that it agreed to cease with respect to New York government entities to CAO and its other private, small-quantity customers.

Procedural History

40. On February 10, 2017, CAO filed a summons with notice in New York State Supreme Court, Erie County, and served the same upon Stericycle.

41. On March 3, 2017, Stericycle demanded service of the complaint.

42. Also on March 3, 2017, Stericycle removed the action to the United States District Court for the Western District of New York, citing 28 U.S.C. §§ 1441 and 1446.

43. On March 6, 2017, Stericycle filed a Notice of Potential Tag-Along Action in the multi-district litigation currently pending in the United States District Court for the Northern District of Illinois (the "MDL").

44. A conditional order to transfer this case to the MDL was entered on March 8, 2017.

45. The Conditional Transfer Order was finalized by the MDL clerk on March 16, 2017, completing transfer of this action to the Northern District of Illinois for consolidated pre-trial proceedings.

46. On March 20, 2017, the case pending in the United States District Court for the Western District of New York (17-cv-194-WMS) was closed, and the case under the above-captioned number was opened in the United States District Court for the Northern District of Illinois.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349)

47. CAO repeats and re-alleges the allegations in paragraphs 1 through 46 as if fully set forth herein.

48. Stericycle's business acts and practices, as alleged herein, are deceptive acts or practices under Section 349 of New York General Business Law, Deceptive Acts and Practice statute ("NYGBL").

49. At all relevant times, CAO was and is a consumer of Stericycle's waste disposal services. Stericycle's waste disposal services, and all conduct related thereto, was and is consumer-oriented within the meaning of NYGBL.

50. Stericycle's conduct, as alleged herein, violated NYGBL for one or more of the following reasons:

a. Stericycle engaged in deceptive, unfair, and unconscionable business practices that misled, or tended to mislead, CAO about facts that it could not reasonably have known;

b. By and through its conduct, Stericycle caused a probability that CAO would be confused about, or would misunderstand, its legal rights, obligations, and/or remedies;

c. Stericycle failed to reveal material facts to CAO; and

d. Stericycle made material representations and statements of facts to CAO.

51. Stericycle's violations of the NYGBL were the direct and proximate cause of damages to CAO.

52. Under these and all other circumstances, Stericycle's conduct in using these business practices was unfair, knowing, willful, malicious, and outrageous so as to shock the conscience, and therefore warrants imposition of punitive damages, treble damages, and attorneys' fees.

SECOND CLAIM FOR RELIEF
(BREACH OF CONTRACT – COVENANT OF GOOD FAITH AND FAIR DEALING)

53. CAO repeats and re-alleges the allegations in paragraphs 1 through 52 as if fully set forth herein.

54. As alleged previously herein, Stericycle and CAO had various agreements through which Stericycle provided medical waste disposal services to CAO since in or about early 2008.

55. CAO and Stericycle entered into the Service Agreement on August 20, 2013.

56. The Service Agreement set CAO's monthly service fee at $6.655.00, and specifically limited Stericycle's ability to increase that monthly fee to situations where necessary to "account for operational changes it implements to comply with documented changes in law, to cover increases in the cost of fuel, insurance, or residue disposal, or to otherwise address cost escalation." Ex. A, ¶ 2(b).

57. Stericycle breached, and continues to breach, its medical waste disposal agreements with CAO, including the Service Agreement, by unilaterally, systematically, and unjustifiably increasing the monthly service fee it charges to CAO.

58. Stericycle's conduct described above breaches its duty of good faith and fair dealing, which is implied in all contracts.

59. CAO has suffered, and continues to suffer, damages due to Stericycle's past and ongoing breaches of its agreements with CAO, including the Service Agreement.

60. Based upon the foregoing, Stericycle is liable to CAO for all damages that CAO has suffered and will suffer as a result of Stericycle's conduct.

THIRD CLAIM FOR RELIEF
(RESCISSION – UNCONSCIONABILITY)

61. CAO repeats and re-alleges the allegations in paragraphs 1 through 60 as if fully set forth herein.

62. CAO and Stericycle entered into the Service Agreement on August 20, 2013.

63. The Service Agreement set CAO's monthly service fee at $6.655.00, and specifically limited Stericycle's ability to increase that monthly fee to situations where necessary to "account for operational changes it implements to comply with documented changes in law, to cover increases in the cost of fuel, insurance, or residue disposal, or to otherwise address cost escalation." Ex. A, ¶ 2(b).

64. Stericycle breached, and continues to breach, the Service Agreement by unilaterally, systematically, and unjustifiably increasing the monthly service fee it charges to CAO.

65. Stericycle's conduct with respect to the Service Agreement and monthly service fee constitutes a substantial and fundamental breach of the Service Agreement, and defeats the purpose for which Stericycle and CAO entered the Service Agreement: for Stericycle to provide waste removal services for the monthly fee listed in the Service Agreement.

66. The Service Agreement is procedurally unconscionable because it is a standard, form contract that Stericycle provided to all small-quantity customers. The font contained therein is small, important terms are not emphasized or otherwise set apart from the remainder of the text, and overall, the text is barely legible.

67. CAO had no choice but to accept the standard, form Service Agreement in the form it was presented because Stericycle faxed the Service Agreement to CAO and requested signatures. CAO had no opportunity to negotiate the Service Agreement or its standard Terms

and Conditions before signing. Any efforts by CAO to negotiate the standard Terms and Conditions would have failed on account of the vastly superior bargaining power Stericycle, a sophisticated corporation, possessed over CAO, a local, non-profit organization.

68. The Service Agreement is substantively unconscionable because its terms allow Stericycle to increase monthly service fees exponentially, unilaterally, and without justification. Stericycle's ability to raise the monthly service fee more than 200% from the monthly service fee explicitly set forth in the Service Agreement was not clearly stated and resulted in unfair surprise to CAO. For all of these reasons, the Service Agreement and its terms unreasonably favor Stericycle.

69. Stericycle's substantial and fundamental breach of the Service Agreement, along with the procedural and unconscionable terms in the Service Agreement, entitle CAO to rescission of the Service Agreement, relief from its obligations under the Service Agreement, and all damages that it suffered as a result of Stericycle's conduct.

FOURTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT)

70. CAO repeats and re-alleges the allegations in paragraphs 1 through 69 as if fully set forth herein.

71. If for some reason CAO's statutory and common law claims asserted above fail, then, in the alternative, Stericycle is liable to CAO for unjust enrichment.

72. If for some reason the Court finds that the parties did not have a valid contract, Stericycle has received hundreds of thousands of dollars from CAO, in the form of monthly service fees and other charges.

73. To allow Stericycle to benefit from its unilateral, systematic, and unjustifiable fee increases would unjustly enrich Stericycle at the expense of CAO, which in equity and good conscience should not be allowed. CAO is entitled to damages for Stericycle's unjust enrichment.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff CAO hereby demands a trial by jury of any issue trial of right by a jury.

RELIEF REQUESTED

WHEREFORE, CAO respectfully requests that this Court enter judgment in favor of it against Stericycle, award in excess of $ 1,800,000.00, and grant the following relief to CAO:

1. Entering judgment for CAO on its NYGBL claim, and awarding damages, in an amount to be determined at trial;

2. Entering judgment for CAO on its claim for breach of the covenant of good faith and fair dealing, and awarding damages in an amount to be determined at trial;

3. Entering judgment for CAO on its rescission claim, finding that the Service Agreement was unconscionable, and relieving CAO from any and all of its obligations thereunder;

4. Entering judgment for CAO on its unjust enrichment claim, and awarding damages, in an amount to be determined at trial;

5. Awarding CAO restitution in the amount of all price increases CAO paid to Stericycle over the course of the parties' agreements for medical waste disposal services, in an amount to be determined at trial;

6. Awarding CAO actual damages, in an amount to be determined at trial;

7. Awarding CAO punitive damages for Stericycle's knowing, willful, and malicious conduct, in an amount to be determined at trial;

8. Awarding pre- and post-judgment interest;

9. Order awarding CAO attorneys' fees and costs incurred in connection with this action under Section 349 of NYGBL; and

10. Granting such other and further relief as this Court deems just and proper.

Dated: March 22, 2017

Respectfully submitted,
HODGSON RUSS LLP
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Community Action Organization of Erie County, Inc.

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